

communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FEDWORLD can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC NUREG and Reg Guide Comments subsystem can then be accessed by selecting the "NRC Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD can also be accessed by a direct dial phone number for the main FEDWORLD BBS: 703-321-3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area can also be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FEDWORLD using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal

Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web, like FTP that mode provides access for downloading files and does not display the NRC Rules Menu. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 4th day of August, 1995.

For the Nuclear Regulatory Commission.

Sher Bahadur, Chief

Waste Management Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

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BILLING CODE 7590-01-P

[Docket No. 030-00472, License No. 37-02385-01, EA No. 95-021]

Carlisle Hospital, Carlisle, PA; Order Imposing a Civil Monetary Penalty

I

Carlisle Hospital (Licensee) is the holder of Byproduct Materials License No. 37-02385-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on March 12, 1985. The License was most recently renewed by the Commission on April 7, 1993. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facility in Carlisle, Pennsylvania.

II

An inspection of the Licensee's activities was conducted on February 2 and 3, 1994, at the Licensee's facility located in Carlisle, Pennsylvania. In addition, an investigation was conducted subsequently by the NRC Office of Investigations. The results of this inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 6, 1995. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in a letter dated July 5, 1995. In its response, the Licensee admits the violation assessed a civil penalty (Violation I), and requests abatement or mitigation of the penalty.

II

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for abatement or mitigation of the penalty and that a penalty of \$5000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$5000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation admitted by the Licensee as set forth in

Section I of the Notice referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland this 7th day of August, 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On June 6, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection conducted at the Licensee's facility located in Carlisle, Pennsylvania. The penalty was issued for one violation. The Licensee responded to the Notice in a letter, dated July 5, 1995. In its responses, the Licensee admits the violation assessed a penalty (Violation I), and requests abatement or mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation Assessed a Civil Penalty

10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with regulatory requirements.

License Condition 11 of Amendment No. 19 of NRC License No. 37-02385-01, which expired on February 29, 1992, but which remained in effect (until Amendment No. 20 was issued on April 7, 1993) pursuant to a timely renewal application made on October 7, 1991, states that licensed material shall be used by, or under the supervision of, Charles K. Loh, M.D., or Robert F. Hall, M.D.

10 CFR 35.13(b), in effect at the time the violation occurred, provided that a licensee shall apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

10 CFR 35.11(b) provides that an individual may use byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in 10 CFR 35.25, unless prohibited by license condition.

10 CFR 35.25(a)(3) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user, shall periodically review the supervised individual's use of byproduct material and the records to reflect this use.

Contrary to the above, from December 3, 1992 to April 7, 1993, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with the above requirements. Specifically, during this period, byproduct material was used by two individuals (other than Dr. Loh or Dr. Hall) to perform teletherapy; and the two individuals were not listed as authorized users on the license and did not qualify as visiting authorized users pursuant to 10 CFR 35.27, and the individuals' use of byproduct material was not under the supervision of Dr. Loh or Dr. Hall (in that neither Dr. Loh nor

Dr. Hall reviewed the individuals' use of the byproduct material, and the related records reflecting such use).

This is a Severity Level III violation (Supplements VI and VII).

Summary of Licensee's Request for Mitigation

The Licensee maintains that it is committed to full regulatory compliance as illustrated by its past record. The Licensee stated that it has only been issued one other Notice of Violation and admitted that it involved a similar matter of concern as addressed by the present Notice. The Licensee stated that it was of the belief that this matter had been addressed adequately by having the authorized users supervise the unauthorized users. The Licensee further stated that its otherwise stellar record of compliance evidences its commitment to compliance with regulatory requirements of the NRC.

The Licensee also stated that, although the previously issued Notice involved unauthorized use similar to that described in the present Notice, it should not be the basis for escalation of the proposed penalty because the Licensee believed that the issue of unauthorized use had been adequately addressed. The Licensee contends that the underlying cause of the present violation stems primarily from poor channels of communication and that these causes were not apparent and not an issue, at the time of the previous Notice. The Licensee stated that it did not previously have the opportunity to address these communication issues.

The Licensee further stated that upon being apprised of the violations, it took effective and comprehensive actions to correct the violations and brought the Licensee into immediate compliance. The Licensee further stated that the violation upon which the civil penalty is based did not cause injury to patients, employees, or staff nor did it create a substantial risk. The Licensee also stated that the unauthorized physicians were well qualified, albeit unauthorized, and subsequently were listed on the license by the NRC, upon approval of the Licensee's amendment.

In addition, the Licensee contends that the violation would not have occurred if the license amendment was timely processed. The Licensee stated that it filed a license amendment with the NRC on October 7, 1991. The Licensee further stated that the two unauthorized physicians were to be added as authorized users. The Licensee notes that while it did not request that the amendment be expedited, the need to make such a request was not foreseen, because it believed that proper supervision was being provided.

For these reasons, the Licensee requests that the proposed civil penalty be wholly abated or, in the alternative, mitigated so as to preclude the 100% escalation of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC letter, dated June 6, 1995, transmitting the proposed civil penalty, notes that the base civil penalty amount of \$2500 in this case was increased by 50% because

the violation was identified by the NRC; increased by 100% because the Licensee had prior opportunity to prevent the violation from recurring given the issuance of the Notice of Violation on December 23, 1992, as well as the telephone inquiry by NRC in February 1993; and decreased 50% based on the Licensee's prompt and comprehensive corrective actions. As a result, a penalty of \$5000 was proposed.

The Licensee's enforcement history includes one violation identified during an NRC inspection conducted in 1991, and one violation identified during an NRC inspection conducted in 1992 that involved the failure to apply for an amendment before permitting physicians to work as authorized users. The latter violation was identified again during the most recent inspection conducted in February 1994.

The Licensee was given prior notice regarding this violation based on the Notice of Violation dated December 23, 1992. It is the Licensee's responsibility to assure that the violation does not recur. The underlying cause of the violation identified during the 1994 inspection may in fact be different from the cause of the similar violation in 1992; however, under the NRC Enforcement Policy, the Licensee is expected to implement lasting corrective action that will not only prevent recurrence of the violation at issue but will be appropriately comprehensive to prevent the occurrence of similar violations in the future. The Licensee committed to providing supervision of the unauthorized users, and it is the Licensee's responsibility to assure that the supervision was provided. The supervision did not occur, even though a Licensee Vice President informed the NRC during a February 1993 telephone conversation that it was occurring.

The Licensee requests that credit be given for its prompt and comprehensive corrective action for the violations identified during the 1994 inspection. The NRC notes that the base civil penalty amount was mitigated 50% based on the Licensee's prompt and comprehensive corrective actions, as provided by the NRC Enforcement Policy. Therefore, no further adjustment of the base civil penalty is warranted based on this factor.

While the Licensee also contends that the violation did not cause injury, the NRC notes that classification of a violation at Severity Level III is based on its safety and regulatory significance, and is not premised on an injury to an individual. If a violation were to contribute directly to an injury to an individual, a higher Severity Level could be assigned and a higher civil penalty could be issued.

The NRC recognizes that the Licensee filed a request for renewal of its NRC license on October 7, 1991, and the processing of that renewal by the NRC was not completed until April 7, 1993. However, during the exit interview following the 1992 inspection, the Licensee informed the NRC inspector that the unauthorized users would be supervised by physicians named on the NRC license. Then, during a February 1993 telephone call to the Licensee's Vice President, General Services, the Licensee again informed the NRC that such supervision was being provided. Had

the Licensee provided accurate information to the NRC as required by 10 CFR 30.9, the NRC staff could have focused its review on the qualifications of the unauthorized physicians and issued a separate license amendment on an expedited basis to ensure that regulatory compliance was maintained while patient teletherapy services continued. Under these circumstances, the NRC staff believes that the timeliness of the processing of the license renewal should not be a mitigating factor in assessing the civil penalty amount.

Accordingly, based on the Enforcement Policy in effect at the time, a \$5,000 civil penalty was appropriate.

The NRC notes that its Enforcement Policy was revised on June 30, 1995 (60 FR 34381). In applying the revised NRC Enforcement Policy, the same civil penalty of \$5,000 would be warranted given the willful nature of the violation; the fact that it was identified by the NRC; consideration of the Licensee's good corrective actions; and the exercise of discretion as warranted under the circumstances, including the facts that the violation represents a recurrence (i.e., directly repetitive) of an earlier violation and the Licensee missed a number of opportunities to correct it. Therefore, application of the new policy results in the same civil penalty being assessed.

NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for abatement or mitigation of the civil penalty. Accordingly, the proposed civil penalty in the amount of \$5000 should be imposed.

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[IA 95-029]

Steven Cody; Order Prohibiting Involvement in NRC-Licensed Activities (Immediately Effective)

I

From approximately January 1990, to April 24, 1993, Steven Cody was employed as a radiographer by Mid American Inspection Services, Inc. (Mid American Inspection or Licensee). Mid American Inspection holds Byproduct Material License No. 21-26060-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on June 13, 1989. The license authorizes the use of iridium-192 in sealed sources for industrial radiography and depleted uranium as solid metal to shield exposure devices and source changers. Licensed material is authorized for use at the facility located at 1206 Effie Road, Gaylord, Michigan, and at job sites located throughout the United States where the NRC maintains jurisdiction. The license was due to expire on August 31, 1994, but is under timely renewal.

II

During the period of approximately October 1992 to April 1993 the Licensee performed industrial radiography on a gas line project near Kalkaska, Michigan. Mr. Steven Cody was a radiographer assigned to the project. As a radiographer, Mr. Cody was responsible for compliance with the Commission's regulations, including the personal supervision of any radiographic operation performed by radiographer's assistants working with him. 10 CFR 34.2 defines a radiographer's assistant as any individual who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

On May 13, 1993, the Licensee received information that indicated that Mr. Cody routinely failed to supervise radiographer's assistants during radiographic operations at the Kalkaska, Michigan, project. On May 14, 1993, the Licensee notified the NRC Region III office of the potential violation.

The NRC Office of Investigations (OI) investigated the matter. Sworn testimony of radiographer's assistants confirmed that Mr. Cody was not always present when the assistant performed radiographic operations. The testimony indicated that at times Mr. Cody left the work site leaving the radiographer's assistant alone to conduct radiographic operations. Mr. Cody admitted to OI in a sworn statement that he sometimes left the job site while an assistant conducted radiographic operations. Mr. Cody stated to OI and during the enforcement conference that he would only leave the job site at the assistant's suggestion that the remaining radiographic operations could be performed without any assistance from Mr. Cody.

OI developed information that indicated that Mr. Cody was familiar with the NRC requirement to have a radiographer present whenever a radiographer's assistant performed radiographic operations.

Mr. Cody's failure to supervise radiographer's assistants during radiography operations is a violation of 10 CFR 34.44, "Supervision of radiographers' assistants." 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the

personal supervision of a radiographer. The personal supervision shall include: (a) The radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the requirements of 10 CFR 34.44, Mr. Cody was not personally present on more than one occasion at the site where sealed sources were used. Therefore, he did not have the ability to give immediate assistance if required and he could not watch the assistant's performance of radiographic operations.

Furthermore, 10 CFR 30.10 states that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: (1) Would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or constitutes a violation of a procedure of a licensee.

Mr. Cody's failure to be present during radiographic operations conducted by a radiographer's assistant is a violation of 10 CFR 34.44 and his violation of that requirement is considered deliberate because Mr. Cody was fully aware of the requirements of 10 CFR 34.44, yet he intentionally elected to leave the job site.

III

Based on the above, the NRC concludes that Steven Cody engaged in deliberate misconduct that caused a violation of 10 CFR 34.44 when he failed to be personally present whenever a radiographer's assistant under his supervision performed radiographic operations. The NRC must be able to rely on its licensees and the employees of licensees, to comply with NRC requirements, including the requirement that radiographic operations cannot be conducted by a radiographer's assistant unless a radiographer is present during such operations. The deliberate violation of 10 CFR 34.44 by Mr. Cody, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Steven Cody will conduct licensed activities in compliance with the Commission's